FILED
United States Court of Appeals
Tenth Circuit

September 15, 2014

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re:

DAVID EARL FLOWERS,

Movant.

No. 14-6179
(D.C. No. 5:97-CV-00532-C)
(W.D. Okla.)

ORDER

Before **GORSUCH**, **EBEL**, and **MATHESON**, Circuit Judges.

David Earl Flowers has filed a motion for authorization to file a second or successive 28 U.S.C. § 2254 habeas petition. Because he has not met the standards for authorization in 28 U.S.C. § 2244(b)(2), we deny the motion.

Mr. Flowers was convicted of two counts of murder in the first degree, one count of conspiracy to commit robbery and one count of attempted robbery. He was sentenced to two life sentences. He appealed, and the Oklahoma Court of Criminal Appeals affirmed in part and dismissed in part. Mr. Flowers subsequently filed a § 2254 habeas petition in federal court. The district court denied the petition, and he did not appeal from that decision.

Mr. Flowers now seeks authorization to file a second or successive § 2254 petition. In his motion for authorization, he checked a box indicating that his new claim relied on a "'new rule of law.'" Mot. for Auth. at 9. That phrasing corresponds to the standard in § 2244(b)(2)(A), which permits authorization when a

new claim "relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable."

Mr. Flowers, however, did not identify the case or provide a case citation to support his contention that his claim relied on a new rule of law. *See* Mot. for. Auth. at 9. The only new case that he identifies in his proposed district court filing is *Logan v. State*, 293 P.3d 969 (Okla. Crim. App. 2013). *See* Attach. to Proposed Filing at 2. But the *Logan* decision fails to meet all of the requirements of § 2244(b)(2)(A).

As the Supreme Court explained in *Tyler v. Cain*, 533 U.S. 656, 662 (2001):

> [Section 2244(b)(2)(A)] establishes three prerequisites to obtaining relief in a second or successive petition: First, the rule on which the claim relies must be a "new rule" of constitutional law; second, the rule must have been "made retroactive to cases on collateral review by the Supreme Court"; and third, the claim must have been "previously unavailable."

We need not address the first or third requirements because the *Logan* decision fails to meet the second requirement; the Supreme Court has not made the *Logan* decision retroactive to cases on collateral review.

For the foregoing reasons, we deny the motion. This denial of authorization "shall not be appealable and shall not be the subject of a petition for rehearing or for

a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court

ELISABETH A. SHUMAKER, Clerk